

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA

Chambers of
JUDGE DONOVAN W. FRANK
DISTRICT JUDGE

Warren E. Burger Federal Building
and United States Courthouse
316 North Robert Street, Suite 724
St. Paul, Minnesota 55101
(651) 848-1290

August 5, 2013

David Ferleger, Court Monitor
Archways Professional Building
413 Johnson Street, Suite 203
Jenkintown, PA 19046

Re: *James and Lori Jensen, et al. v. Minnesota Department of Human Services, et al.*
Civil No. 09-1775 (DWF/FLN)

Dear Mr. Ferleger:

Pursuant to the Order of April 25, 2013 (Doc. 212), you filed the *Status Report on Compliance* (June 11, 2013), (Doc. No. 212). In lieu of issuing a show cause order against Defendants for sanctions and contempt, I am respectfully making the following requests of you with regard to your responsibilities as the Court's independent consultant and monitor.

I note that the Defendants' June 4, 2013 response to the draft report agrees with many of your findings of non-compliance. Defendants there commit to the establishment of a *Jensen* Implementation Team and to implementation of an action plan to address, among other things, outstanding compliance deficiencies. Also, Defendants announce that they plan to replace the Cambridge facility by "reallocating resources to community-based services" in successors to the institution.

Due to be implemented by Defendants are the Rule 40 modernization and the *Olmstead* Plan requirements of the Settlement Agreement. The State intends to extend these provisions widely. Settlement Agreement at 3, ¶ 7:

The State also agrees that its goal is to utilize the Rule 40 Committee and Olmstead Committee process described in this Agreement to extend the application of the provisions in this Agreement to all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes.

The Rule 40 modernization and the *Olmstead* Plan, and other elements of the settlement agreement, will affect all persons served at state operated locations other than MSHS-Cambridge, including Anoka Regional Treatment Center and Minnesota Security Hospital among others. Class members formerly at METO and MSHS-Cambridge residents who have moved among these and

David Ferleger, Court Monitor
August 5, 2013
Page 2

other state-operated and supported facilities will be affected.¹ Based on your report and the parties' responses, it is reasonable to expect implementation at these two facilities will be complex.

To preliminarily prepare for and to facilitate further compliance reviews, the Court requests you to conduct visits to Anoka Regional Treatment Center and Minnesota Security Hospital. You will also visit a number of class members and former MSHS-Cambridge residents who have left the facilities. The Court assumes and expects that the Defendants will cooperate and provide full access for these visits and to records of such persons. Consultants may be retained to assist in this effort.

Finally, the Court requests you to contact the United States Department of Justice, Civil Rights Division, to inquire regarding possible assistance in this matter.

Thank you for your consideration.

Very truly yours,

s/Donovan W. Frank

DONOVAN W. FRANK
United States District Judge

DWF:rlb
Shamus P. O'Meara, Esq.
Margaret Ann Santos, Esq.
Mark R. Azman, Esq.
Steven H. Alpert, Assistant Attorney General
Scott H. Ikeda, Assistant Attorney General

¹

See, e.g., report of Dr. Edwin Mikkelsen at 33 and 38 (locations from which individuals go to Cambridge, and to which they are placed). The Minnesota Governor's Council on Developmental Disabilities' response to the Court Monitor's draft report noted issues regarding Anoka and MSH (St. Peter), including discussion in the Office of Legislative Auditor report on state-operated services, (pp. 11-12). Both are attached to the Court Monitor's June 11, 2013 Report.